United States of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No.....

NEIL E. REID, Circuit Judge of the Sixteenth Judicial Circuit, sitting in and for the County of Saginaw, Petitioner and Defendant Below,

vs.

SECOND NATIONAL BANK AND TRUST COMPANY, of Saginaw, Michigan, individually, and as Trustee under the Ninth and Tenth Paragraphs of the Will of Arthur D. Eddy, Deceased, and CHARLOTTE EDDY MORGAN, Respondents and Plaintiffs Below

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BRIEF FOR PETITIONER, NEIL E. REID, CIRCUIT JUDGE, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINION OF SUPREME COURT OF MICHIGAN

The opinion is found in the Record as Pleading C.

It is discussed at pages 13 to 16 of the Petition, and in

Part III, Page 31 of this Brief.
Page V, page 35 of this Brief.

II.

JURISDICTION

The date of the Judgment to be reviewed is April 20, 1943, when the judgment of the Supreme Court of Michigan was entered.

Appellate jurisdiction is based upon Section 344 of Title 28 of U. S. C. A. and the Constitution of the United States.

III.

SPECIFICATION OF ERRORS

The errors in the opinion and judgment of the Supreme Court of Michigan, which are relied upon by Petitioner, are set out in the statement of "Reasons Relied Upon for Allowance of Writ" in the accompanying petition for Writ of Certiorari.

Petitioner relies upon and will urge before this Court, all of the errors therein assigned.

IV.

SIX MAIN QUESTIONS FOR DECISION:

FIRST: Did the District Court have jurisdiction of the subject matter under the Trustee's Amended Bill, see Pleading A, page 41 of Record?

SECOND: Was Plaintiff Cleveland estopped to claim in the second suit, the invalidity of the Federal Judgment for lack of jurisdiction of the subject matter?

THIRD: Did the Federal Judgment adjudicate remainderman Cleveland's rights against the Charitable Trust for contribution of claimed Trustee's attorneys' fees, when the Charitable Trust was not a party to the Federal Judgment?

FOURTH: Did the Supreme Court of Michigan have power by its judgment of April 20, 1943, to prohibit *cestui que* trust Cleveland from submitting for decision on the merits in a *second equity suit,* her claim for proper contribution of such trustee's expenses from the Charitable Trust, which was not a party to the Federal Judgment of February 7, 1939?

FIFTH: Is the Supreme Court of Michigan's Writ of Prohibition, denying Remainderman Cleveland the right to try her claim (for the first time) of contribution from the Charitable Trust (a *co-cestui que* trust) a denial of due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, since it cannot be said that the Federal Judgment of February 7, 1939, is *res adjudicata* as to the other *cestui que* trust, which was not a party to such judgment?

SIXTH: Did the Supreme Court of Michigan have the power to prohibit a trial on the merits in the second suit, of charges of fraud (admitted by the trustee's motion to dismiss) in the procurement and affirmance of the Federal Judgment of February 7, 1939?

In other words—should the Highest Court of a State be permitted to prohibit a trial on the merits of admitted false statements of value of the trust estate corpus, which false statements are admitted (by the motion to dismiss) to have led to an affirmance of the Federal Judgment of February 7, 1939, by the United States Circuit Court of Appeals, without opinion, see 117 Fed. (2d) 1009?

V.

A Statement of Facts sufficient to present the Issues and Questions involved is found in the "Summary Statement of Matters Involved," as contained in the petition for Writ of Certiorari.

VI.

ARGUMENT ON THE LAW

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PART I

Jurisdictional Questions, Arising Under Federal Court Judgments, Are Reviewable.

(a) This Honorable Supreme Court examines questions of jurisdiction of Lower Federal Courts.

U. S. v. Griffin, 303 U. S. 226.

As, for example, a decision of the Highest Court of a State, on a question of jurisdiction of the subject matter arising under a Federal Judgment, which has been pleaded as *res adjudicata* of a State Court action, as in the case at bar.

Stoll v. Gottlieb, 305 U. S. 165.

(b) Federal Judgments pleaded as *res adjudicata* raise Federal Questions reviewable by this Court.

Stoll v. Gottlieb, supra.
Coleman v. Miller, 307 U. S. 433.
Toucey v. Insurance Company, 314 U. S. 118, 129.

And see—

U. S. v. Griffin, supra, where this Court said it must—

> "examine the contention, and if we conclude that the District Court lacked jurisdiction of the cause, direct that the bill be dismissed."

And this Rule applies—even though the jurisdiction was not challenged below—but the cause was tried on the merits, yet all jurisdictional questions will be decided when raised.

And see—

Indianapolis v. Chase Bank, 314 U. S. 63,

where the Circuit Court of Appeals and this Supreme Court had previously held the Federal District Court had jurisdiction—but

on a second certiorari—this Court held there was no jurisdiction.

(c) Where the Highest Court of a State has decided a question of Jurisdiction by a Writ of Prohibition, such decision is reviewed by this Supreme Court upon Writ of Certiorari.

Bullock v. R. R. Commissioner, 254 U. S. 513.

(d) The Validity of a Federal Judgment is always reviewable—when a question of the lack of jurisdiction of the subject matter is presented.

Avery v. Popper, 179 U. S. 305.
Abbott v. Bank, 175 U. S. 409.
U. S. v. Guaranty Co., 309 U. S. 506.
Indianapolis v. Chase Bank, supra.

(e) Federal Questions are held to arise for example, when—

Claims of liability for attorneys' fees on bonds filed in a United States Court are pleaded.

Tullock v. Mulvane, 184 U. S. 497.

Claims against a receiver appointed by a United States Court are made.

McNulta v. Lockridge, 141 U. S. 327.

Claims were made in the Supreme Court of Michigan to land, based upon a Federal Judgment—the Supreme Court of Michigan saying in its opinion that a "contention of plaintiff invoked 'the effect of the decree of the Federal Court.' "

Donohue v. Vosper, 243 U. S. 59, 64.

(f) A State Court's order authorizing suit in the Federal Court—could not confer jurisdiction of the subject matter—which had been withheld by Congress.

U. S. v. Sherwood, 312 U. S. 584.

Nor could a State Statute confer jurisdiction of the subject matter upon a Federal Equity Court.

Kellean v. Casualty Co., 312 U. S. 377 (Syl. 6).
Pusey and Jones Co. v. Hanssen, 261 U. S. 491.
Mathews v. Rodgers, 284 U. S. 521.

PART II

Summary of Leading Decisions on the Principal Jurisdictional Questions Involved.

A.

This Question is ruled by—

U. S. v. Guaranty Co., 309 U. S. 506.
Indianapolis v. Chase Bank, 314 U. S. 63.
Princess Lida v. Thompson, 305 U. S. 456.
Jones v. Harsha, 233 Mich. 409.
Barney v. Barney, 216 Mich. 224.

B.

That the party attacking a judgment for lack of jurisdiction—sought affirmative relief by cross claim—does not render the judgment valid and enforceable.

U. S. v. Guaranty Co., supra.
Strandt v. Strandt, 278 Mich. 354, 358.

See page 33, Part IV, of this Brief.

C.

Final Judgment holding Jurisdiction existed—will be set aside at any time if no jurisdiction existed.

Indianapolis v. Chase Bank, 314 U. S. 63.

Here the Circuit Court of Appeals and this Supreme Court had previously held the Federal District Court had jurisdiction—but

on a second certiorari—this Court held there was no jurisdiction.

This decision seems decisive that lack of jurisdiction of the District Court to enter the judgment of February 7, 1939—*is now* open to be decided—and it cannot be *res adjudicata,* this Court saying:

> "We are thus compelled to the conclusion that the District Court was without jurisdiction. And, of course, this Court by its denial of certiorari, when the case was here the first time, could not confer jurisdiction which Congress has denied."

D.

The Saginaw Probate Court, which appointed the Testamentary Trustee, must allow its counsel fees.

Taylor v. Sternberg, 293 U. S. 470.

The decision cited by the Supreme Court of Michigan, of *Sprague v. Ticonic Bank* (307 U. S. 161) did not involve a testamentary trust at all.

See page 35, Part V of this Brief.

E.

Any Court, State or Federal, may enjoin enforcement of a Judgment procured by Fraud in any other Court, State or Federal.

Marshall v. Holmes, 141 U. S. 589.
Johnson v. Waters, 111 U. S. 640.
Arrowsmith v. Gleason, 129 U. S. 86.
Brown v. Hanson, et al., 103 Fed. (2d) 685, Cert. denied 308 U. S. 571.
Bruce v. Bruce (5 C. C. A.), 263 Fed. 36.
Barnell v. Kunkel (8 C. C. A.), 259 Fed. 394.

PART III

Chicot District v. Bank, 308 U. S. 371, Distinguished.

Although the Supreme Court of Michigan did not in its opinion filed February 23rd, 1943 (pleading C), decide the question of *res adjudicata*—yet that Court spoke of the decision in *Chicot District v. Bank, supra,* as persuasive.

The Supreme Court of Michigan grounded its decision and judgment ordering the Writ of Prohibition solely on the theory that Remainderman Cleveland was estopped to claim in the second case—a lack of jurisdiction of the subject matter in the first case and the Federal Judgment of February 7, 1939.

We have already pointed out that this claim of estoppel is exactly contrary to this Honorable Court's rule laid down and never departed from in—

Vallely v. Insurance Co., 254 U. S. 348.

(a) the *Federal Judgment of February 7, 1939, unlawfully invaded* the exclusive control and jurisdiction of the State Probate Court of and over the Testamentary Trust Estate's assets and corpus.

The Judgment attempted—(1) to take out of the Probate Court Mrs. Cleveland's residuary legacy entirely—to (2) assign it to the remainderman legatee, to (3) put a lien upon it for claimed trustee's attorneys fees, (4) determine the amount of the lien, and (5) impound (away from the control of the Probate Court) the assets of this legacy to the remainderman—without the legacy ever again coming into the State Probate Court.

See the Probate Order of January 22, 1942, attached to Petitioner for Certiorari's answer, as Exhibit A, page 33 Pleading B.

(b) An *"action in personam"* such as the Chicot case (308 U. S.) which goes to final judgment in a Federal Court of competent jurisdiction—with the parties before it—and involves construction of a Federal Statute—

is not a precedent for upholding a judgment of a Court —which has been excluded from jurisdiction by the Power that created that Court, such as the Congress or the Legislature of Michigan.

See—

U. S. v. Guaranty Co., 309 U. S. 506.
Kalb v. Feuerstein, 308 U. S. 433.

(1) *U. S. v. Guaranty Company, supra,* rules the case at bar—

Here suit was had in a Missouri Federal Court by the United States as Guardian of certain Indian Tribes—to recover royalties under a lease of the Indians' coal lands.

The Indians' intervention was in a reorganization proceeding involving the lessee's corporate assignee—and was properly in the Missouri Federal District Court *unless*—

the treaties with the Indians controlled—which required (through Act of Congress) all claims under such leases to be made in the *exclusive jurisdiction of the United States Federal Court in Oklahoma.*

The United States, as Guardian, entered the Missouri Federal Court—asked for the royalties—but final judgment was rendered on the debtor's cross claim against the Indians.

This second action (challenging the Missouri Judgment) was in the Federal District Court of Oklahoma—where Congress had provided the exclusive jurisdiction under the leases should exist.

The Honorable Court's opinion stated:

> "* * * The reasons for the conclusion that this immunity may not be waived govern likewise the question of *res adjudicata.* As no appeal was taken from this Missouri judgment, it is subject to collateral attack only if void. * * *
>
> In the Chicot County Drainage Dist. Case no inflexible rule as to collateral objection in general to judgments was declared. We explicitly limited our examination to the effect of a subsequent invalidation of the applicable jurisdictional statute upon an existing judgment in bankruptcy. To this extent the case definitely extended the area of adjudications that may not be the subject of collateral attack. No examination was made of the susceptibility to such objection of numerous groups of judgments concerning status, extra-territorial action of courts, or strictly jurisdictional and quasi-jurisdictional facts. * * *"

(2) *Kalb v. Feuerstein, supra,* also rules the case at bar.

PART IV

A Judgment Void for Lack of Jurisdiction of the Subject Matter—May Be Attacked Collaterally in Any Court Having the Parties Before It.

U. S. v. Guaranty Co., supra.
Johnson v. Zerbst, 304 U. S. 458.
Kalb v. Feuerstein, supra.
Vallely v. Insurance Co., supra.

Briefly these decisions involved:

(a) *U. S. v. Guaranty Co., supra,* suit by U. S. and Indians in a Missouri Federal Court—excluded by Congress from jurisdiction—decision made in the Oklahoma Federal Court in a new case started to test the validity of the prior judgment..

(b) *Johnson v. Zerbst, supra,* cited by this Court in the *U. S. v. Guaranty* decision.

Habeas Corpus (an admittedly collateral proceeding) to set aside conviction in a Federal Court having no jurisdiction to try the petitioner.

(c) *Kalb v. Feuerstein, supra,* suit resulting in foreclosure decree in State Courts (unappealed from) held void because Congress had placed subject matter in the Bankruptcy Court under the Frazier-Lemke Act.

(d) *Vallely v. Insurance Co., supra,* where Congress had withdrawn jurisdiction to adjudge an insurance corporation a bankrupt—held a judgment of adjudication (unappealed from) was void—even if the Company had consented to the adjudication and thereafter assisted the Trustee in his duties.

Lack of Jurisdiction Is Not Aided or Cured by a Defendant's Cross-Bill or Other Proceeding Asking Affirmative Relief.

Strandt v. Strandt, 278 Mich. 354, 358.

In *Strandt v. Strandt, supra,* the Supreme Court of Michigan's opinion stated:

> "Defendant's cross-bill asked for cancellation of the quit claim deed and for an accounting.

> This appeal is from a decree in favor of defendants.
>
> The agreement, by its language, purports to confer jurisdiction upon the 'circuit court for the county of Allegan, in chancery.'
>
> 'jurisdiction of the subject matter is governed by law and cannot be conferred by consent.' *Halkes v. Douglass & Lomason Co.*, 267 Mich. 600. * * *
>
> Plaintiffs seek specific performance; defendants desire cancellation of their deed and both parties ask for an accounting. * * *'''

And see—

> *U. S. v. Guaranty Co., supra.*

Moreover, no cross-bill in the case at bar was necessary. Trustee sued remainderman Cleveland and by its amended bill admitted large losses in the trust estate. A mere formal answer by defendant Cleveland in the first case was all she needed—the burden of proof was always upon the Trustee. See—*Davidson v. Young*, 290 Mich. 266.

PART V

Trustee's Counsel Fees.

The opinion of the Supreme Court of Michigan relied upon the decision in *Sprague v. Ticonic Bank*, 307 U. S. 161.

But, Petitioner for Certiorari begs to submit that the Ticonic case did not involve at all a Testamentary Trustee's attorneys' fee.

The fees in the Ticonic case were those of a Trustee appointed under a living deed or agreement of trust—no question of the lack of jurisdiction or power of the Federal Court was involved—the case passing on the recovery

from an insolvent National Bank of certain bonds left in trust with it, and certain questions of interest. See 303 U. S. 161.

The General Rule is that compensation and expenses of Trustees and Receivers and their attorneys must be fixed by the Court appointing them.

See—

Taylor v. Sternberg, 293 U. S. 470, Syl. 6 and 7,

where the fees order of another Court was held a nullity.

PART VI

Summary of Fraud Charges—All Admitted by the Trustee's Motion to Dismiss Filed in Second Suit.

The essential Frauds claimed in the bill in the second suit are:

1st—Conspiracy by two Trustees to defeat actions by two *cestui que* trusts for the recovery of money—

for the especial interests of the two Trustees and opposed to those of the *cestui que* trusts.

See paragraphs 34 and 35 of Bill, page 289, of Pleading A, admitted by motion to dismiss.

2nd—False positions assumed by the two Trustees acting together—to convince the Federal Court that the proper judgment *was that* the corpus of the Trusts was the *small par value shares* of the family holding company,

after the two Trustees had misled the two *cestui que* trusts throughout the entire trial that their position was

that the corpus of the trusts was the very valuable assets of the family company.

3rd—False statements of value of the corpus of the Trusts before the Federal appellate court—which both Trustees by active statement and concealment of the true facts—joined in—now admitted by the motion to dismiss—to be totally false.

See paragraphs 31, 32 and 33 of Bill, pages 280 to 288 in Pleading A.

4th—Antagonistic and collusive positions in the Supreme Court of the United States, in the first suit, that:

(a) Mercantile Trust Company was the representative of the *cestui que* trust Doebler Estate and that it had her interests in hand and actually intended to collect all income due her—but that it was honestly convinced the Federal Judgment was correct and that her estate was not entitled to anything further from the Testamentary Trustee.

See paragraphs 34, 35 and 60, pages 289 and 302 of legatee Cleveland's Bill in second suit, admitted by Trustee's motion to dismiss.

Neither Trustee disclosed to the Federal Court or to the two *cestui que* trusts that they were conspiring to defeat their interests and rights because—

if the arrears of $180,000 of unpaid income found due by the audits of the Testamentary Trustee were all recovered —they would be subject to income tax in the one calendar year of recovery—and the Mercantile Trust Company was afraid it might be liable for losses to Mrs. Doebler's Estate in making payment of a larger income tax of possibly $75,000.

The Testamentary Trustee also knew this—and that it might also be liable individually.

So both Trustees deliberately conspired to defeat the entire recoveries that their audits showed were due the two *cestui que* trusts as to legatee Cleveland about $125,000 of her one-sixth interest—and as to the life tenant, her mother, the admitted sum of $180,000.

NO ISSUE of Fraud and Collusion of the two Trustees was ever submitted to the Federal Court—

The Rehearing in the Court of Appeals was asked to protect legatee Cleveland from unjust payment of Trustee's attorneys fees, and it was in answer to the rehearing petition, that the Testamentary Trustee again affirmed its solemn oral argument in February, 1941 (three years after the last audit and appraisal was made as of June, 1938, showing a loss then of $125,000) that legatee Cleveland's share was then, in February, 1941, of the full value of $616,000—See paragraphs 31 to 33 of the Cleveland bill, Record, page 280 of Pleading A, as filed in second suit.

PART VII

Argument on Fraud Charges in Procurement of Federal Judgment.

Please see Appendix to this Brief "A."

PART VIII

Discussion of Supreme Court of Michigan's Opinion Filed February 23, 1943.

Please see Appendix "B."

PART IX

Conclusion of Brief.

A summary of the Trustee's Amended Bill in the first suit (upon which the Federal Judgment was entered) shows:

1st—That the State Probate Court had made a prior construction of Mr. Eddy's will—the amended bill stating:

> "That the annual accounts of said trustee have been made to the Probate Court for the County of Saginaw, and after due and proper notice thereon hearing has been held, and said accounts have been approved, and that the Probate Court for the County of Saginaw, after due and proper notice, has construed Paragraph 10 of said will; * * *."
>
> Pleading A, page 52.

2nd—The Amended Bill tendered a strict Probate Testamentary Trustee's Final Accounting by Prayer E, as follows:

> "E. That this court find and determine as of the date of the creation of said trust fund created under paragraph nine of said Will the value thereof."
>
> Page 53.

3rd—Prayers D, F, G and H all concern the assignment of the residue of the Ninth paragraph Trust Estate, one-half of which was bequeathed to remainderman Cleveland (see Paragraph "Ninth (e)" of Will, Pleading A, pages 31, 32).

This Honorable Court has uniformly held since its decision in the leading case of—

Byers v. McAuley, 149 U. S. 608, 615—

that a Federal Equity Court's attempt to assign the residue of a decedent's Estate in course of probate in a State Court—was a nullity.

There was no dispute as to remaiderman Cleveland being entitled under Paragraph Ninth (e) of the Will —to a one-half of the residuary trust estate created by paragraph Ninth. That being so no jurisdiction existed to—

(a) Pass upon the Trustee's management of the Trust Assets—

Princess Lida v. Thompson, supra.

(b) Or assign the residue.

For in *Byers v. McAuley, supra*, at page 620, this Court held a Federal Equity Court had no power to assign a bequest to a resident Charity, and that such an order of distribution was a nullity.

No more it would seem—could the Michigan Federal Equity Court (1) take possession of the "res" of the Ninth Paragraph Trust—(2) assign one-half of the residue to remainderman Cleveland, and one-half to a *co-cestui que* trust remainderman, the Charitable Trust —and (3) fix a Testamentary Trustee's Counsel fees and apportion such fees all against remainderman Cleveland's one-half share except $1,000 and then (4) require the Charitable Trust to pay such $1,000—when it was not a party to the Federal Judgment of February 7, 1939, and then finally (5) without ever letting the corpus of residue of the Ninth Paragraph Trust re-enter the State Probate Court's control or jurisdiction —direct that it be paid over to the two *cestui que* trust remaindermen.

It is respectfully submitted that Petitioner Circuit Judge should be allowed this Honorable Court's Writ of Certiorari to review the final Judgment of Prohibition of the Supreme Court of Michigan as entered on April 20, 1943.

Respectfully submitted,

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